

H-3109-1 - LEASING UNDER SPECIAL ACTS

Regional Solicitor's Memorandum, Dated November 15, 1976

"Railroad Rights-of-Way; Mineral Leasing"

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November 15, 1976

Memorandum

To: Lands and Minerals Division, Regional Solicitor's Office
Field Solicitor, Billings
Field Solicitor, Cheyenne
Field Solicitor, Aberdeen

From: Assistant Regional Solicitor

Subject: Railroad Rights-of-Way; Mineral Leasing

In order that advice from this office be uniform regarding questions concerning the leasing of minerals covered by railroad rights-of-way, the following guidelines should be followed:

I. PRE-1875 ACT RAILROAD RIGHTS-OF-WAY

- A. The mineral estate covered by pre-1875 Act railroad rights-of-way remain in the United States. United States v. Union Pacific R. Co., 353 U.S. 112 (1957).

The nature of the interest granted is a limited fee made on implied condition of reverter in event the company ceases to use or retain the land for the purpose granted.

The Leasing Act minerals are subject to lease by the United States, even though the lands upon which the right-of-way is situated have been granted as school lands (U.P.R.Co., 72 I.D. 76, 1965; aff'd Wyoming v. Udall, 379 F.2d 635, 10th Cir., cert. den. 389 U.S. 985, 1967); have been patented under the homestead laws (George W. Zarak, 4 IBLA 82, 1971, aff. Rice v. United States, 479 F.2d 58, 8th Cir., cert. den. U.S. 858, 1973); or where the right-of-way traverses an alternate section patented under Sec. 3 of the Act of July 1, 1862. (Brown W. Cannon, Jr., 24 IBLA 166, 83 I.D. 80, 1976).

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1. Oil and gas is leased under the provisions of the Act of May 21, 1930, 46 Stat. 373.
2. All other Leasing Act minerals are leased under the provisions of the Act of February 25, 1920.

II. 1875 ACT RIGHTS-OF-WAY

- A. The mineral estate in lands covered by a right-of-way granted under the Act of March 3, 1875 remains in the United States. The interest granted is an easement only. (Great No. Ry. Co. v. United States, 315 U.S. 262, 1942.)
- B. If the United States patents the lands covering the right-of-way and does not reserve the minerals, the mineral estate passes to the patentee. C&NW Ry. Co. v. Cont. Oil Co., 253 F.2d 468 (10th Cir., 1958); Amerada Hess Corp., 24 IBLA 360, 83 I.D. 194 (1976).
- C. Under II.A., oil and gas is leased under the 1930 Act; all others under the 1920 Act. Under B, the United States has no authority to lease the mineral estate. Phillips Pet. Co., 61 I.D. 93, 1953; Sol. Op., 67 I.D. 225 (1960); Amerada Hess Corp., supra.

11/22/76 - To State Director, Attn: Technical Services BLM